

## National Credit Union Administration

## Pt. 749, App. B

### *D. What Are the Recommended Minimum Retention Times?*

Record destruction may impact the credit union's legal standing to collect on loans or defend itself in court. Since each state can impose its own rules, it is prudent for a credit union to consider consulting with local counsel when setting minimum retention periods. A record pertaining to a member's account that is not considered a vital record may be destroyed once it is verified by the supervisory committee. Individual Share and Loan Ledgers should be retained permanently. Records, for a particular period, should not be destroyed until both a comprehensive annual audit by the supervisory committee and a supervisory examination by the NCUA have been made for that period.

### *E. What Records Should Be Retained Permanently?*

1. Official records of the credit union that should be retained permanently are:

(a) Charter, bylaws, and amendments.

(b) Certificates or licenses to operate under programs of various government agencies, such as a certificate to act as issuing agent for the sale of U.S. savings bonds.

2. Key operational records that should be retained permanently are:

(a) Minutes of meetings of the membership, board of directors, credit committee, and supervisory committee.

(b) One copy of each financial report, NCUA Form 5300 or 5310, or their equivalent, and the Credit Union Profile report, NCUA Form 4501, or its equivalent as submitted to NCUA at the end of each quarter.

(c) One copy of each supervisory committee comprehensive annual audit report and attachments.

(d) Supervisory committee records of account verification.

(e) Applications for membership and joint share account agreements.

(f) Journal and cash record.

(g) General ledger.

(h) Copies of the periodic statements of members, or the individual share and loan ledger. (A complete record of the account should be kept permanently.)

(i) Bank reconciliements.

(j) Listing of records destroyed.

### *F. What Records Should a Credit Union Designate for Periodic Destruction?*

Any record not described above is appropriate for periodic destruction unless it must be retained to comply with the requirements of consumer protection regulations. Periodic destruction should be scheduled so that the most recent of the following records are available for the annual supervisory committee audit and the NCUA examination. Records that may be periodically destroyed include:

(a) Applications of paid off loans.

(b) Paid notes.

(c) Various consumer disclosure forms, unless retention is required by law.

(d) Cash received vouchers.

(e) Journal vouchers.

(f) Canceled checks.

(g) Bank statements.

(h) Outdated manuals, canceled instructions, and nonpayment correspondence from the NCUA and other governmental agencies.

[66 FR 40579, Aug. 3, 2001, as amended at 74 FR 35769, July 21, 2009]

## APPENDIX B TO PART 749—CATASTROPHIC ACT PREPAREDNESS GUIDELINES

Credit unions often look to NCUA for guidance on preparing for a catastrophic act. While NCUA has minimal regulation in this area,<sup>1</sup> as an aid to credit unions it is publishing this appendix of suggested guidelines. It is recommended that all credit unions develop a program to prepare for a catastrophic act. The program should be developed with oversight and approval of the board of directors. It is recommended the program address the following five elements:

(1) A business impact analysis to evaluate potential threats;

(2) A risk assessment to determine critical systems and necessary resources;

(3) A written plan addressing:

i. Persons with authority to enact the plan;

ii. Preservation and ability to restore vital records;

iii. A method for restoring vital member services through identification of alternate operating location(s) or mediums to provide services, such as telephone centers, shared service centers, agreements with other credit unions, or other appropriate methods;

iv. Communication methods for employees and members;

v. Notification of regulators as addressed in 12 CFR 748.1(b);

vi. Training and documentation of training to ensure all employees and volunteer officials are aware of procedures to follow in the event of destruction of vital records or loss of vital member services; and

vii. Testing procedures, including a means for documenting the testing results.

(4) Internal controls for reviewing the plan at least annually and for revising the plan as

<sup>1</sup>See 12 CFR 748.1(b) concerning a FICU's reporting of any catastrophic act that occurs at its office to its regional director and 12 CFR 749.3 concerning the location of a FICU's vital records center to avoid the simultaneous loss of both sets of records in the event of disaster.

circumstances warrant, for example, to address changes in the credit union's operations; and

(5) Annual testing.

[72 FR 42274, Aug. 2, 2007, as amended at 77 FR 71085, Nov. 29, 2012]

## **PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS**

Sec.

750.0 Scope.

750.1 Definitions.

750.2 Golden parachute payments prohibited.

750.3 Prohibited indemnification payments.

750.4 Permissible golden parachute payments.

750.5 Permissible indemnification payments.

750.6 Filing instructions; appeal.

750.7 Applicability in the event of liquidation or conservatorship.

AUTHORITY: 12 U.S.C. 1786(t).

SOURCE: 76 FR 30517, May 26, 2011, unless otherwise noted.

### **§ 750.0 Scope.**

(a) This part limits and prohibits, in certain circumstances, the ability of Federally insured credit unions, including Federally and state chartered natural person credit unions and Federally and state chartered corporate credit unions, to enter into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties (IAPs).

(b) The limitations on golden parachute payments apply to troubled Federally insured credit unions that seek to enter into contracts to pay or to make golden parachute payments to their IAPs. A “golden parachute payment” is generally considered to be any payment to an IAP which is contingent on the termination of that person's employment and is received when the Federally insured credit union making the payment is troubled. The definition of golden parachute payment does not include payments pursuant to qualified retirement plans, non-qualified bona fide deferred compensation plans, nondiscriminatory severance pay plans, other types of common benefits plans, state statutes and death benefits. Certain limited exceptions to the golden parachute payment prohibition are provided for in cases involving

unassisted mergers and the hiring of new management to help improve a troubled Federally insured credit union's financial condition. A procedure is also set forth to permit a Federally insured credit union to request permission to make what would otherwise be a prohibited golden parachute payment.

(c) The limitations on indemnification payments apply to all Federally insured credit unions, including state chartered credit unions, regardless of their financial health. Generally, this part prohibits Federally insured credit unions from indemnifying an IAP for that portion of the costs sustained with regard to an administrative proceeding or civil action commenced by NCUA or a state regulatory authority that results in a final order or settlement pursuant to which the IAP is assessed a civil money penalty, removed from office, prohibited from participating in the affairs of a Federally insured credit union or required to cease and desist from an action or take an affirmative action described in section 206 of the Federal Credit Union Act, 12 U.S.C. 1786. There are exceptions to this general prohibition. First, a Federally insured credit union may purchase commercial insurance to cover these expenses, except judgments and penalties. Second, the credit union may advance legal and other professional expenses to an IAP directly (except for judgments and penalties) if its board of directors makes certain specific findings and the IAP provides a written affirmation and agrees in writing to reimburse the credit union if it is ultimately determined that the IAP violated a law or regulation or has engaged in certain unsafe or unsound practices or breaches of fiduciary duty. For Federal credit unions, fiduciary duty is defined in 701.4 of this chapter. State chartered credit unions should look to applicable state law.

### **§ 750.1 Definitions.**

As used in this part:

(a) *Act* means the Federal Credit Union Act.

(b) *Benefit plan* means any employee benefit plan, contract, agreement or other arrangement subject to the requirements in § 701.19 of this chapter;